



EMPLOYMENT TRIBUNALS

Claimant: Ms Z Blackledge

Respondent: Anderton Enterprises Limited

Heard at: Manchester **On:** 24 January 2020

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: In person

Respondents: Mr D Miller, Director

JUDGMENT ON RECONSIDERATION AND CASE MANAGEMENT ORDERS

It is the judgment of the Tribunal that :

The rejection of the respondent's response on 17 January 2020 is reconsidered and revoked. The respondent's response is accepted out of time , the respondent may respond to the claims , and participate in the hearing of the claimant's claims.

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

CASE MANAGEMENT ORDERS AND NOTICE OF HEARING

1. The hearing of the claims be postponed to be heard by any Employment Judge sitting alone on **5 June 2020 at Manchester Employment Tribunal** ,

Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA at 10.00 a.m. for three hours.

2. The respondent shall by **14 February 2020** provide to the claimant (but not the Tribunal) copies of all documents relevant to her claims.
3. The claimant shall by **28 February 2020** provide to the respondent (but not the Tribunal) copies of all documents relevant to her claims.
4. The claimant shall prepare a bundle for the further hearing. This is to be prepared by the claimant and sent to the respondent by **13 March 2020** , and agreed by **20 March 2020**.
5. The parties shall exchange witness statements , on the same day , by **24 April 2020**.
6. It is recorded that the Issues to be determined will be:
 - a) What was the relevant leave year for the purposes of calculating the claimant's entitlement to pay in lieu of untaken annual leave at the date of termination of her employment on 27 August 2019?
 - b) In particular, can the respondent show that there was a relevant agreement , satisfying the definition in Reg.2(1) of the Working Time Regulations , whereby the claimant's annual leave year, in accordance with Reg13(3), ran from 1 August to 31 July ?
 - c) If the leave year was from 1 August to 31 July , can the claimant carry over unused annual leave entitlement from one leave year to the next ?
 - d) What is the appropriate daily rate at which pay in lieu of annual leave should be paid ?
 - e) Has the respondent, on its own case, paid the correct sum in lieu of unused leave on termination ?
 - f) If the respondent has overpaid, can it recoup any overpayment from any award the Tribunal may make?

REASONS

1. In this case the claimant has brought a claim in respect of unpaid pay in lieu of untaken annual leave arising out of the termination of her employment with the respondent on 27 August 2019. The respondent did not submit a response within the prescribed time limit, and a subsequent response was rejected as having been filed out of time. The respondent , however, attended this hearing, in the person of Mr Miller, a director, who made a successful application for the response to be accepted out of time. Reasons for that judgement were given at the time, and no request was made for written

reasons. If either party requires written reasons they must make the appropriate application within 14 days of sending of this judgement and orders. Consequently, the respondent may participate in these proceedings, and the Employment Judge went on to consider whether the claim could be heard.

2. The essence of the dispute relates to how the claimant's annual leave year should be reckoned. The claimant's claim is based upon the holiday entitlement that she accrued during the whole of the 10.5 months of her employment. She produced calculations in support of that claim, which allowing for the sum of £146 paid by the respondent, produced a claim on her case of £661 (or thereabouts).
3. The respondent's case is that the holiday year is not to be taken from the date upon which the claimant started work, which is the default position under regulation 13 of the Working Time Regulations, but that the provisions of the claimant's contract of employment operated to provide that the holiday year ran from 1 August to 31 July. The claimant cannot, the respondent contends, and the claimant agrees, carry over untaken annual leave entitlement from one leave year to the next. As the claimant took no paid holiday during the whole of her employment, if this contention is right, then she loses the right to be paid in lieu of untaken annual leave when she starts the next leave year. She will then, of course, have accrued further annual leave entitlement, in respect of which the respondent contends the claimant has been paid, in fact overpaid.
4. Mr Miller produced to the Tribunal (in fact he sent it in with the response form) a document entitled Workplace Alcohol and Drugs Policy, which comprises of some five pages, the last page of which has a number of signatures including the claimant's, and the date of 9 August 2019. The Employment Judge discussed this document with him, and asked if this was the agreement upon which he wished to rely, pointing out that it did not appear to be an agreement but a policy, and may therefore may not satisfy the requirements of the Regulations. Mr Miller was of the view that upon induction the claimant would have been provided with a contract of employment and believe that there may be another document which would satisfy the requirements of the Regulations. It is also to be noted that on the respondent's case at present, if this document is alleged to constitute a relevant agreement, it was not made until 9 August 2019, and under its own terms, any variation would be on 12 weeks notice. That begs the question of whether, and if so when, the respondent could vary any contractual terms as to the annual leave year without the requisite notice, which on its own document, appears to be 12 weeks. Those, however, are issues for the respondent to consider.
5. Further the respondent's general manager Dave Cottam was unable to attend the hearing, but had provided a statement. It may well be the case that he would be required to give evidence about the contractual arrangements made with the claimant.

6. In the circumstances Mr Miller sought a postponement, in order to assemble the necessary evidence. The claimant did not object to that application, and the Employment Judge granted it.
7. The Employment Judge did observe how it was regrettable that the parties were in dispute , and could not resolve a claim involving a relatively modest sum of money. He suggested that they may wish to discuss settlement, which they duly did, but to no avail.
8. In those circumstances, whilst it does seem highly disproportionate, the Tribunal postponed the hearing of the claimant's claim, and has made case management orders so the parties can be fully prepared on the next occasion. Further , the Employment Judge has set out what he understands to be the issues to be determined by the Tribunal at the next hearing.
9. The claimant may also wish to recalculate her claim as it appeared to the Employment Judge that she had taken an average over the entire period of her employment, when it was his understanding that the relevant period would be the last 12 weeks of her employment, provided that she worked in each of those weeks. If, however she did not, she may be entitled to go further back until she has a requisite period of 12 weeks during which she worked. This may, of course, affect her calculations, but she can address this before the next hearing.
10. For the respondent, Mr Miller raised the question as to whether if the claimant had been overpaid (which the respondent apparently considers she has) the respondent could recoup any such payment. The Employment Judge did not consider this would be possible, other than by way of set-off against any award the Tribunal may make. It would seem , however, unlikely, if theoretically possible, for the Tribunal to find that the claimant's claim succeeds in respect of the previous period of annual leave entitlement, so as to entitle her to an award, but then finds that the actual payment made in respect of the final four weeks of employment was an overpayment. These are matters however which can be ventilated further at the postponed final hearing , which can be heard by any Employment Judge.
11. Finally, whilst their discussions did not bear fruit at the Tribunal, the Employment Judge strongly urges the parties to resume negotiations through ACAS, failing which they are both likely to have to invest a disproportionate amount of time and effort in further preparing this claim and the response to it.

Employment Judge Holmes
Dated : 27 January 2020

JUDGMENT SENT TO THE PARTIES ON
3 February 2020

FOR THE TRIBUNAL OFFICE

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.